
(1903) 02 MAD CK 0008
In the Madras High Court

Sundara Mudali

APPELLANT

Vs

Ponnusami Mudali

RESPONDENT

Date of Decision : 02-02-1903

Acts Referred:

Citation : (1903) 13 MLJ 275

Judgement

1. This is a revision petition against an order of the District Munsif of Vellore setting aside an award. The dispute between the parties was referred to arbitration without the intervention of the Court u/s 525 of the Code. Consequently Sections 525 and 526 are the governing sections. Section 526 provides if no ground such as is mentioned or referred to in Section 520 or Section 521 be shown against the award, the Court shall order it to be filed, and such award shall then take effect as an award made under the provisions of this chapter-"" The Munsif in making the order setting aside the award purported to act u/s 526. It seems to me that, in making an order under this section, it was only competent for him, either, if he was satisfied that no ground such as is mentioned in Section 520 or Section 521 was shown, to order the award to be filed or, if he was satisfied that such ground was shown, to dismiss the application to file the award, In my opinion it was not competent for him in these proceedings to make an order setting aside the award, and I must hold that the order setting aside the award was made without jurisdiction. It is clear that the legal consequences which ensue from an order refusing to file an award may differ very materially from the legal consequences which ensue from an order setting aside the award. This is clearly pointed out in the judgment of the Privy Council in the case of Muhammad Nawaz Khan v. Alam

Khan L.R. 18 IndAp 73. My attention has been called on behalf of the defendant, (the party who obtained the order setting aside the award) to

the case of Chintamalayya v. Thadi Gangireddi ILR 20 M. 89. There an application was made by one of the parties who had Submitted to

arbitration to have an award which had been made filed in Court, Certain objections were raised and those objections were overruled and a

decree was passed in the terms of the award. Afterwards the party who had objected to the filing of the award brought a suit to have it declared

that neither the award nor the decree passed in pursuance of that award was binding on him, and the Court held that inasmuch as the Court had

jurisdiction to determine the genuineness or validity of the award in the proceedings under the chapter in question, the suit was not maintainable. It

may very well be that where objections are raised to an award and those objections are gone into by the Court and overruled and a decree passed

in terms of the award, in a subsequent action the decree so passed may be held to be binding, but it does not at all, it seems to me, follow that

where an application is made to file an award and the Court is of opinion that a good case has not been made out, it is competent for the Court on

the application to file the award to make a formal order setting it aside. I do not think the present case is governed by this decision, and I am of

opinion that the order setting aside the award was made without jurisdiction. In making the order setting aside the award, the Munsif acted on the

ground that the arbitrators had been guilty of misconduct. I need scarcely say if it was shown that the arbitrators heard only one side and declined

to hear the other side, they would have been guilty of misconduct, and the award could be impeached upon that ground, but I have read the order

of the Munsif and the statement of facts therein contained and I am of opinion that there is nothing to lend any support to the suggestion that the

arbitrators were guilty of misconduct in the sense in which that word is used in Section 521 and in the sense in which that word has been construed

in the decisions with reference to questions of this nature. It might perhaps be said that the proceedings of the arbitrators in the present case were

informal, but I do not think it can be put higher than that. The mistake the munsif appears to have made in this case is that he seems to have

regarded himself as a court of appeal from the decision of the arbitrators to whom the parties of their own free will referred their disputes for

arbitration. The result is, I must set aside the order of the Munsif, and, as it seems to be a clear case, I send back the case to the Munsif with the direction that he do file the award.

2. The plaintiff is entitled to the costs of the application before the Munsif and also to his costs in this Court.